



OFFICE OF THE COUNTY ATTORNEY

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County Executive

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PRIVILEGED AND CONFIDENTIAL

**MEMORANDUM**

September 26, 2005

To: Karen Orlansky, Director  
Office of Legislative Oversight

Via: Marc Hansen, Chief  
Division of General Counsel *mt*

From: Clifford L. Royalty  
Associate County Attorney *CLR*

Re: *Legal Issues Related to OLO's Clarksburg Town Center Fact-Finding Review*

By memorandum dated September 12, 2005, you requested that this office comment on the responses that you received to a series of questions that you posed to the Maryland-National Capital Park and Planning Commission's Director of Park and Planning. More specifically, you have asked whether this office concurs with "Park and Planning's answers to questions 1, 2, 3, 6, and 7." Generally, we do, though we have noted a few inaccuracies and, as to the response to question 2, a significant omission. That omission may be the product of the seemingly narrow scope of question 2. Regardless, we begin with the response to question 2.

In question 2, OLO asks for a description of the roles and responsibilities of the County and the Planning Board in the "building permit review, inspection, and enforcement process." OLO also inquires as to whether "the Department of Permitting Services, the Department of Park and Planning, or both are responsible for checking whether a building permit application complies with the development standards of the RMX zone." In response, Park and Planning concludes that the Planning Board "does not have the authority to enforce the issuance of building permits." (See "Responses to Questions 2, 6, and 7," p. 5). While Park and Planning's conclusion is technically correct, OLO's inquiry necessitates a fuller response, especially in light of the context within which question 2 is posed, i.e. OLO's review of the Clarksburg Town Center development review process.

What Park and Planning does not mention is that optional method developments in the RMX zones are subject to site plan review and approval. In keeping with the intended flexibility of such optional method projects, the development standards are applied, and may be enforced, through a site plan. And the site plan process, of course, is solely within M-NCPPC's ambit. See

*Division 59-D-3, Site Plan.* Thus, through site plan review, M-NCPPC's Planning Board approves, for example, the "height, location, and use of all structures." § 59-D-3.23(a). The Planning Board also approves "[a] development program stating the sequence in which all structures, open spaces, vehicular and pedestrian circulation systems, landscaping and recreational facilities are to be developed." § 59-D-3.23(m). In furtherance of that development program, an applicant seeking site plan approval "shall designate the point in the development program sequence when the applicant will notify the planning board to request inspection for compliance with the approved site plan." § 59-D-3.23(m). That "inspection for compliance" is a necessary adjunct to the Planning Board's enforcement authority. Whenever the Planning Board determines that the "the terms, conditions or restrictions upon which the site plan was approved are not being complied with," the Planning Board "may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan." § 59-D-3.6. If compliance with the site plan is not forthcoming, "the Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50." § 59-D-3.6. Once the Planning Board revokes a site plan approval, "any applicable building permits and use-and-occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid." § 59-D-3.6.

Thus, it is apparent that site plan review and enforcement are important components of land development within the RMX zones and that the Planning Board has exclusive authority over the site plan process. See §§ 59-D-3.6 and 50-41(k). Consideration of that process is necessary to any review of the issues that have arisen at the Clarksburg Town Center.

Our remaining comments regarding Park and Planning's responses are relatively minor and warrant only a brief discussion. We will address them in the order that they arise in the responses.

In the response to question 2, Park and Planning states that Article 28, § 8-119(a) of the Maryland code "does require that all building permit *regulations* be referred to the Commission for review and recommendations . . . ." (See "Responses to Questions 2, 6, and 7," p. 2). (Emphasis added). In fact, that provision requires that all "building permit applications," not regulations, be referred to the Commission.

In response to question 6, Park and Planning states that the "Board does not make a finding concerning the height of a structure when it reviews a preliminary plan of subdivision." (See "Responses to Questions 2, 6, and 7," p. 6). That may be, but, as Park and Planning acknowledges, a preliminary plan must "substantially conform" to the master plan. § 50-35(l). Insofar as the height in a zone is governed by a master plan, it seems that the Planning Board would address height through the preliminary plan review.

Karen Orlansky

*Legal Issues Related to OLO's Clarksburg Town Center Fact-Finding Review*

Page 3

In response to question 1, Park and Planning cites to Article 28, § 7-108(b) for the Board's authority to adopt a "general" master plan. (See "Responses to Question 1," p. 1). We are unsure of the reference to a "general" master plan. Article 28, § 7-108(a) authorizes M-NCPPC to adopt a "general plan;" Article 28, § 7-108(b) authorizes M-NCPPC to adopt a "local master plan."

Also in response to question 1, Park and Planning cites to § 50-37(c) for the rule that M-NCPPC staff has five days to reject a record plat. (See "Responses to Question 1," pp. 4-5). The correct cite is to § 50-37(a)(2).

If you would like to discuss this matter further, please feel free to call me at 777-6739.

cc: Charles W. Thompson, Jr., County Attorney  
Michael Faden, Senior Legislative Counsel  
Malcolm Spicer, Associate County Attorney

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